

needs--and not by strategies in the regulatory arena. This even-handed regulation, in promoting competition, should help lower prices, generate jobs, and produce economic growth.^{25/}

As part of its implementation of revised Section 332, the Commission reviewed the level of competition in the CMRS marketplace to determine whether it should exercise its forbearance authority as established by Congress in the OBR. Although the Commission reluctantly declined to treat CMRS as a single market for purposes of the forbearance analysis, it found that forbearance from certain Title II provisions was warranted in the case of all CMRS providers.^{26/}

Echoing its mandate, therefore, the Commission found that above a baseline level of actual competition--i.e., an area where industry growth is promoted and customers are protected--similar mobile radio services will be accorded similar regulatory treatment.^{27/} Each of the classes of CMRS services, the Commission concluded, including cellular services, operates in this competitive arena.^{28/} Accordingly, with respect to the removal of federal regulatory restraints, cellular providers will be treated in a manner similar to all other CMRS providers.^{29/}

²⁵ Id. at 1420.

²⁶ Id. at 1467.

²⁷ Id. at 1467-68.

²⁸ Id.

²⁹ Id.

In its Third Report and Order, the Commission explained that in fashioning its technical and operational rules, it will be guided by the level of actual and potential competition among the "classes" of CMRS. It then concluded that "all commercial mobile radio services compete with one another, to meet the needs of consumers to communicate while on the move".³⁰/ Thus, although it will regard the "classes" of CMRS separately for purposes of assessing the states' petitions, the Commission views the provision of CMRS as a single marketplace. Absent such an approach, the Commission could not fulfill its mandate to create a symmetrical regulatory regime over CMRS.³¹/

B. THE COMMENTERS SHOULD NOT BE ACCORDED SPECIAL REGULATORY TREATMENT

Most of the non-cellular CMRS providers ask for special treatment, by urging the Commission to carve out of Section 332 a regulatory exception from state rate regulation for non-cellular CMRS. These Commenters argue in favor of disparity and unequal regulatory advantage in direct opposition to the Commission's stated intent to effectuate Congress' overall scheme of regulatory parity. In short, they propose exactly the sort of regulation which Congress sought to eliminate, and which the Commission sought to avoid in

³⁰ Id. at paras. 37, 43.

³¹ Id. at para 42.

fashioning its preemption rules and making its forbearance determination.

For example, Johnson maintains that "different regulatory treatment is appropriate for different categories of CMRS licensees," and so it "continues to urge the Commission to exempt 'local' [SMR] systems from CMRS obligations."³²/ NCRA urges "[U]ntil such time that effective competition arrives, perhaps in the form of [PCS] and [wide-area SMR], continued rate regulation is necessary to restrain the dominating market power of cellular duopolists."³³/ Nextel alleges "The states have failed to demonstrate that rate regulation of emerging non-dominant CMRS [such as wide-area SMR] providers is necessary to protect the public from anti-competitive practices and other abusive behavior."³⁴/

In general, the non-cellular CMRS providers' arguments in favor of special regulatory treatment run along two lines: (1) the states' petitions fail to either mention or prove the existence of market failure in the states' non-cellular markets;³⁵/ or (2) eliminating state rate regulation of "incumbent cellular operators" would permit predatory

³² Johnson Comments at 3-4.

³³ NCRA Comments at 2-3.

³⁴ Nextel Comments at 10.

³⁵ See Johnson Comments; AMTA Comments; Mtel Comments; Paging Network Comments; PCIA Comments.

practices that could inhibit the competitiveness of non-cellular providers.^{36/}

1. **GTE supports the Commenters' opposition to continued state rate regulation but opposes their proposal for disparate regulation of similar "classes" of CMRS**

GTE submitted Comments, supported by factual evidence, in opposition to the California Petition illustrating that the level of competition in California adequately protects CMRS subscribers, and CMRS is currently not a replacement for a substantial portion of the landline telephone exchange service. Therefore, the CPUC should be preempted from any rate regulation. A component of GTE's position is its view that the CMRS marketplace must necessarily be regarded uniformly, as a single market of competing technologies and services.

While cellular service is competitive in its own right, cellular, wide-area SMR, SMR and paging providers also compete with one another, or have the potential to compete with one another, to serve mobile radio services customers. See, Craig O. McCaw and AT&T, Memorandum Opinion and Order, File No. ENF-93-44; released September 19, 1994, para. 41. As noted above, the Commission has concluded that "all commercial mobile radio services compete with one another, or have the

³⁶ See Nextel Comments; NCRA Comments.

potential to compete with one another."³⁷/ In particular, "[t]oday, there is general agreement that wide-area SMR service is developing as a competitor to the cellular industry."³⁸/ Further, "SMR operators also are positioning themselves to compete against cellular carriers."³⁹/ With respect to paging, the Commission expects that CMRS such as cellular and SMR will provide competition to paging.⁴⁰/ The emergence of PCS will add another competitor to the CMRS market.⁴¹

As present or future competitors of cellular services, the Commenters would enhance their own market prospects by handicapping providers of cellular services. For example, if disparate regulations are applied in California, then the pricing strategies of cellular providers will be known well in advance of their implementation by virtue of the tariffing process, thereby affording non-cellular competitors the opportunity to respond by adjusting their untariffed prices favorably. The result will be dampened competition and fewer consumer benefits. Non-cellular CMRS providers should not be permitted to so brazenly undermine the benefits to be derived from Congress' revision of Section 332. Rather than

³⁷ Third Report and Order at para. 43.

³⁸ Id. at para. 72.

³⁹ Id. at para. 73.

⁴⁰ Id. at para. 35.

⁴¹ Id. at nn. 100 & 118.

encumber any wireless carriers with state regulations, GTE believes the better course of action is to remove state rate regulation from all wireless carriers. Competition, not regulatory advantage, should determine success in the CMRS marketplace.⁴²/

VI. Conclusion

The California Petition should be either dismissed or denied. Not only does the California Petition fail to satisfy the burden of proof imposed by Section 20.13 of the Commission's Rules, as GTE demonstrated in its original Comment filed with this Commission on September 19, 1994, but the comments offered in support of the California Petition are similarly lacking in both substance and merit. The Supporting Comments are wrought with arguments proffered merely in self-interest and fail to provide any reliable hard evidence which would warrant a grant of the CPUC's request.

GTE and other cellular carriers have demonstrated, by the utilization of empirical evidence and economic theory, that the cellular industry, as one component of the CMRS market, is a competitive industry, characterized by

⁴² As quoted above, the Commission believes that "[s]uccess in the marketplace thus should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer needs--and not by strategies in the regulatory arena." Second Report and Order at 1420.

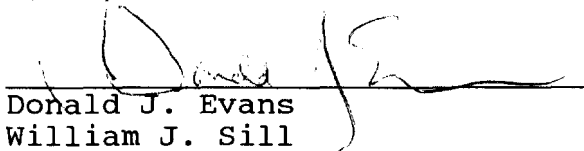
consistently-decreasing service rates and ever-increasing customer service benefits. This competition will ensure the maintenance of just and reasonable rates for CMRS in California.

WHEREFORE, for the reasons stated above, GTE respectfully requests that the California Petition should be dismissed or, in the alternative, denied.

Respectfully submitted,

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October 19, 1994

CERTIFICATE OF SERVICE

I, Sherry Schunemann, a secretary in the law firm of McFadden, Evans & Sill, do hereby certify that true copies of the foregoing "Consolidated Reply of GTE Service Corporation, On Behalf of Its Telephone and Personal Communications Companies, to Certain Comments in Support of The Petition of The People of The State of California and The Public Utilities Commission of The State of California Requesting Authority to Regulate Rates Associated With The Provision of Cellular Service Within The State of California" were sent this 19th day of October, 1994, by first-class United States mail, postage prepaid, to the following:

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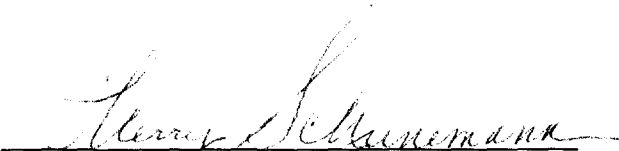
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